IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1652 OF 2004

A. K. John .... Petitioner

Versus

Union of India & Ors. ....Respondents

Mr.R. P. Saxena for the Petitioner.
Mr.Suresh Kumar for the Respondents.

CORAM : DALVEER BHANDARI, C.J. &
S.J. VAZIFDAR, J.
DATE : 21ST JULY, 2005.

P.C. :

1. The petitioner has challenged an order of the Central Administrative Tribunal dismissing his Original Application No.462 of 2003 on the ground that the reliefs sought therein are the same as the reliefs sought by the petitioner in an earlier Original Application being Original Application No.209/2002, which was dismissed by an order of the Central Administrative Tribunal dated 17. 6. 2002.

2. We are in respectful agreement with the learned members of the Central Administrative Tribunal. It is however necessary to elaborate on the reasons for coming to this conclusion.

3. In Original Application No.209/2002, the petitioner sought to quash and set aside an order dated 24th December, 2001 to the extent that it had denied him promotion as a Stenographer Grade II with effect from 14th April, 1984, for an order directing the respondents to promote him as a Stenographer Graded II with effect from 14th April, 1984 and for reliefs consequent thereto. The CAT by the said order dated 17th June, 2002 dismissed the Original Application No.209/2002. Paragraph 5 of the said order reads as under :-

> "5. During the course of the arguments, the learned counsel for the applicant has insisted that the applicant should have been given promotion as SG II with effect from 14. 4. 84. It is not understood how the applicant can claim promotion from 14. 4. 84, when he had failed in the test twice , and ultimately passed the test only on 23. 2. 2001. The learned counsel , has also not come before us with any specific rule or law under which applicant could be given promotion from 14. 4. 84 , when he qualified the test only on 23. 2. 2001. The Recruitment Rules for the post of SG-II clearly provides that the appointment to the post off SG-II will be made only by promoting SG-III with five years of

> regular service in that grade having a speed of 120 words per minute in shorthand and 45 words per minute in typing. In the circumstances, we do not find any force in the averments made by the learned counsel for the applicant , and hence we are unable to grant the relief prayed for by the applicant."

4. In the present Original Application No.462/2003 the petitioner has once again impugned the order dated 24th December, 2001. The petitioner has also impugned an order dated 25th April, 2003 with which in fact, the petitioner is currently concerned. The petitioner had, of necessity, to challenge the order dated the 24th December, 2001 in order to sustain any challenge to the subsequent order dated 25th April, 2003 , which proceeded on the basis that the order dated 24th December, 2001 was valid and subsisting. The authorities correctly proceeded on the basis that the order dated 24th December, 2001 was valid in view of the petitioners challenge thereto in Original Application No.209/2002 having failed. These orders were challenged to the extent that they hold the seniority of the petitioner in the grade of stenographer-II to be from 24th December, 2001.

5. To this extent , in any event , there can be little if any doubt that the present Original Application No.462/2003 stood concluded by

the order dated the 17th June, 2002.

6. Mr.Saxena, the learned counsel appearing on behalf of the petitioner, however contended that the main relief sought in the present original application was a declaration that the petitioner is entitled to seniority in stenographer grade -II with effect from 18th October, 1989 i.e. from the date when his juniors were promoted and reliefs consequent thereto.

7. The submission is not well founded. The date from which the petitioners seniority is to be reckoned was already determined by the said order dated the 17th June, 2002. That order has attained finality. A fresh cause of action does not arise in the Petitioner's favour merely because his juniors were promoted on 18th October, 1989. The juniors were promoted as they admittedly , attained all the qualifications necessary for the same. The petitioner had failed to obtain the necessary qualifications before they did and was therefore not eligible to be promoted on the date on which his juniors were promoted. As observed earlier, the petitioner obtain the necessary qualifications making him eligible to be considered for promotion only on 23rd February, 2001. This fact is not even denied.

8. Faced with this Mr.Saxena, submitted that the petitioner was not given an opportunity of obtaining the said qualification earlier. Admittedly, the petitioner had failed the test, which was conducted on 26th December 1995. The petitioner also failed in the test conducted on 19th December, 1996. The petitioner challenged this result by filing Original Application No.938/1998. By an order dated 4th January, 2001 the CAT permitted the petitioner to appear in a further test. This was done as the respondents stated that the record pertaining to the petitioners test had been misplaced. Thereafter , the petitioner passed the test, as stated above, on 23rd February, 2001. It is important to note that in these proceedings the petitioner had specifically contended that as the respondents had misplaced the record pertaining to both the examinations an adverse inference should be drawn against them under section 114 of the Evidence Act and that consequently, he should be declared as having passed the said examinations held on the earlier dates. This submission was specifically rejected by the said order dated 4th January, 2001.

9. The effect of the aforesaid orders dated 4th January, 2001 and 17th June, 2002 clearly is that the petitioner obtained the

necessary qualifications entitling him to be considered for promotion to the said post only on 23rd February, 2001.

10. In the circumstances the petition is dismissed. In view of the repeated applications by the petitioner in respect of the same subject matter we are constrained to pass an order of costs against him. The petitioner shall pay the cost of this petition fixed at Rs.2500/- to respondent No.1 within eight weeks from today.

CHIEF JUSTICE

S.J. VAZIFDAR, J.